

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 4811 of 2014 (O&M)

Date of Decision: 25.04.2022

Kulwant Kaur and Others

... Appellant(s)

Versus

Sukhdev Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. P.S.Guliani, Advocate
for the appellant(s).

Mr. Ashok Bhardwaj, Advocate
for the respondent.

Anil Kshetarpal, J.

1. While assailing the concurrent findings of fact, arrived at by both the Courts below, the legal representatives of the defendant-Gurmail Singh have come up in the second appeal. Both the Courts below have decreed the suit for recovery of ₹14,50,000/- along with interest @ 9% per annum from the date of loan till the date of filing of the suit and 6% per annum as pendente lite and future interest till the realization of the decretal amount.

2. The plaintiff claims that the defendant-Gurmail Singh is his brother and he had given him a sum of ₹14,50,000/- on 30.10.2004. In order to return the loan, the defendant issued a cheque dated 30.04.2005, drawn on Union Bank of India for a sum of ₹15,37,000/- in order to discharge his liability. The defendant, through his legal representatives, contested the suit

claiming that the cheque is forged and fabricated.

3. In order to prove the issuance of a cheque by the defendant, the plaintiff examined an official from the Union Bank of India where the deceased defendant had an account. The plaintiff, in order to prove his case, has examined PW.1 Inderjit Arora, PW.2 Jangir Singh, Clerk-cum-Cashier from the Oriental Bank of Commerce, PW.3 Sukhdev Singh (the plaintiff himself), PW.4 Navdeep Gupta, Handwriting and Fingerprints Expert, PW.5 Jagdish Kumar, clerk, M/s Jang Singh and Company, Commission Agent, Bhawanigarh and PW.6 hem Raj. Per contra, the legal representatives of the defendant-Gurmail Singh examined DW1. Kulwant Kaur and DW.2 Harpal Singh. Both the Courts below, on appreciation of evidence, decreed the suit on preponderance of the probabilities.

4. Heard the learned counsel representing the parties, at length and with their able assistance, perused the judgments passed by both the Courts below and the record, which was requisitioned.

5. The learned counsel representing the appellants contends that the plaintiff has miserably failed to prove that he paid ₹14,50,000/- to the predecessor of the appellants. He submits that there is a contradiction in the stand taken by the plaintiff in his evidence. While elaborating, he submits that the plaintiff claims that he paid the amount to the deceased after withdrawing it from his firm for which no evidence has been produced.

6. This Court has carefully read the statement of the plaintiff. He has stated that he withdrew the amount from the Oriental Bank of Commerce. He has further stated that he paid the money from his personal account as he had sold the crop and get the money from the firm in his name.

7. It is evident that the learned counsel representing the defendants

did not further cross-examine the witnesses on this aspect. The defendants

also did not lead any evidence to prove that the plaintiff did not withdraw the amount from his account in the Oriental Bank of Commerce.

8. In the considered view of this Court, there is no contradiction in the stand taken by the plaintiff. Moreover, the defendant (since deceased) had issued a cheque in favour of the plaintiff in order to refund the amount. Such cheque is a negotiable instrument. Section 118 of the Negotiable Instruments Act, 1881, provides that until the contrary is proved, the negotiable instrument carries various statutory presumptions including the one with respect to the consideration.

9. Keeping in view the aforesaid facts, no ground is made out to interfere. Hence, the present appeal is dismissed.

10. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

April 25, 2022

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No